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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,713	07/19/2004	Volker Hennige	254659US0XPCT	4451
22850	7590	10/11/2012	EXAMINER	
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314			COLE, ELIZABETH M	
			ART UNIT	PAPER NUMBER
			1789	
			NOTIFICATION DATE	DELIVERY MODE
			10/11/2012	ELECTRONIC

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RECORD OF ORAL HEARING
U.S. PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte VOLKER HENNIGE,
CHRISTSIAN HYING, and GERHARD HORPEL

Appeal 2011-007022
Application 10/501,713
Technology Center 1700

Oral Hearing Held: May 9, 2012

Before BRADLEY R. GARRIS, CHARLES F. WARREN and
JEFFREY T. SMITH, *Administrative Patent Judges*.

APPEARANCES:

ON BEHALF OF THE APPELLANT:

STEFAN KOSCHMUEDER, ESQUIRE
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1 The above-entitled matter came on for hearing on Wednesday, May 9,
2 2012, commencing at 10:36 a.m. at the U.S. Patent and Trademark Office,
3 600 Dulany Street, Alexandria, Virginia, before David Ritchey, Notary
4 Public.

5 PROCEEDINGS

6 JUDGE GARRIS: Sir, you have 20 minutes.

7 MR. KOSCHMUEDER: Okay.

8 JUDGE GARRIS: Please begin.

9 MR. KOSCHMUEDER: Thank you. I'd like to take one or
10 two moments to briefly discuss and contract Claim 1 with the primary
11 reference, which is a Penth reference, or P-E-N-T-H.

12 The claim mentions a member that includes a flexible substrate
13 and the substrate has particular porosity characteristics and a particular
14 thickness characteristic. In combination that substrate has to be a non-
15 woven material. I think that is key to understanding some of the substantial
16 differences between the Penth invention and the claimed invention. Penth is
17 describing something that is substantially different with respect to its
18 physical structure --

1 JUDGE WARREN: Counselor?

2 MR. KOSCHMUEDER: Yes.

3 JUDGE WARREN: Is your non-woven argument somewhere
4 in your brief, your reply brief?

5 MR. KOSCHMUEDER: The non-woven argument ties
6 together with the porosity argument. If it's --

7 JUDGE WARREN: But it's not separately stated?

8 MR. KOSCHMUEDER: The non-woven argument. I would
9 have to double check.

10 JUDGE WARREN: I think you mention in your brief that the
11 Penth substrate has a metal component to it. But I am not sure that I recall a
12 non-woven argument.

13 MR. KOSCHMUEDER: Perhaps the non-woven argument, per
14 se, is not in the brief but the non-woven structural characteristic in the claim
15 is tied to the porosity. If it's acceptable to the Board I would like to follow
16 this line of reasoning, which will be to the porosity argument.

17 JUDGE WARREN: You have 20 minutes, sir.

18 MR. KOSCHMUEDER: Thank you. So returning now to

1 Penth, describing a membrane having a substantially different structure
2 relating to a perforated material. And I think that's important with respect to
3 both the non-woven characteristic in our claims, that is appellant's claims,
4 and also to the porosity argument.

5 It has been pointed out that Penth describes, as I just mentioned,
6 a non-woven material and how claims recite a particular porosity, more than
7 50 percent. When we look at Penth describing a membrane having certain
8 perforated characteristics. You can imagine that just in quickly thinking
9 about it, a Band-Aid, for example, is a membrane that could have
10 perforations, holes, so to speak. But that's certainly not non-woven. And
11 even though a Band-Aid could have big holes, so to speak, describing the
12 size of the pores, that doesn't necessarily affect its percent porosity, per se,
13 as its recited in the present claims.

14 So the point is this. The perforated membrane described in
15 Penth is substantially different from the highly porous, non-woven
16 membrane recited in the present claims. In fact, even in our specification
17 there is a explicit distinction made between the Penth substrate and the
18 presently claimed invention.

1 Carrying that forward. The examiner has argued that Penth is
2 somehow suggestive of a membrane or a substrate having high porosity.
3 The examiner has focused on the size of the pores and disclosure in Penth
4 that may relate to the size of the pores.

5 Pardon me, APJ Warren, did you want to pose a question?

6 JUDGE WARREN: (Nonverbal no.)

7 MR. KOSCHMUEDER: The argument has been made and I
8 think the argument is valid that the size of the pores and porosity described
9 in percent are two different things. You can imagine, for example, a
10 substrate or a membrane having an area of one square inch, for example, and
11 it could have three pores in it. Those pores could have a relatively small
12 diameter, for example, on the nanometer or micron scale. Of course you
13 would have very low total porosity in percent of that membrane.

14 On the other hand, you could have a fairly large pore but a
15 small number of pores in that model substrate. But still you wouldn't have
16 the porosity, the high porosity percent as its recited in the present claims.

17 Returning now again to the structure of the Penth substrate and
18 the thickness that's recited in the present claims, which is 10 to 200 micron

1 in the claimed invention.

2 As already mentioned, Penth is describing a substrate material
3 that is perforated and doesn't have non-woven character, at least the word
4 "non-woven" doesn't appear in the Penth disclosure. At best Penth would
5 describe a fleece material or a felt material. If you think about fleece and
6 felt and correspond that with a 10 to 200 micron thickness recited in the
7 present claims, it is evident that there is a substantial difference between the
8 two.

9 That basically covers the arguments with respect to the porosity
10 recited in our claims and the porosity in Penth, which are at substantially
11 different realms, so to speak. In fact, some evidence has been proffered
12 during prosecution showing that the porosity when measured in percent is
13 substantially different from the porosity recited in the present claims.

14 Secondly, the examiner recognizes that the Penth disclosure
15 doesn't have a description of the particular adhesion promoters recited in the
16 present claims, glycidylxy and a methacryloyloxy-functionalized silane. It
17 has been argued that the Bishop disclosure on which -- Bishop is B-I-S-H-O-
18 P -- disclosure on which the examiner relies to cure that defect of Penth, has

1 certain characteristics in which the glycidyoxy or methacryloyloxy-
2 functionalized silane is described as a combination with a tris-
3 organosiloamine reaction product. So in that sense Bishop doesn't cure the
4 defect of Penth. Bishop instead is disclosing the use of a silane composition,
5 which is actually the reaction product of a glycidyoxy or a
6 methacryloyloxy-functionalized silane and the tris-organosiloamine. So the
7 point being that the Bishop disclosure doesn't come out and tell you that a
8 particular silane or the particular silane recited claims in fact would be
9 functional in the structure of the membrane described in Penth.

10 Further in that regard, particularly with Claim number 53. Our,
11 the appellants, adhesion promoters described as a composition that consists
12 of certain components. And again that is a particular composition that is
13 distinguished from any silane or adhesion promoter composition described
14 in the Bishop references. Thus, there being a further distinguishing feature
15 between what's recited in the present claims and what is described in the art,
16 which allegedly teaches the particular functionalized silanes recited in the
17 claims.

18 With that I would like to see if the Board has any questions but

1 that is the overview of the invention presented by --

2 JUDGE GARRIS: Thank you, sir. Judge Warren?

3 JUDGE WARREN: No questions.

4 JUDGE GARRIS: Judge Smith?

5 JUDGE SMITH: No questions.

6 MR. KOSCHMUEDER: Thank you.

7 JUDGE GARRIS: I have no questions today. Thank you very
8 much.

9 (Whereupon, the proceedings at 10:45 a.m. were concluded.)